

NO. 2:13-CV-54-FL

Defendant.

ORDER

This matter comes now before the court upon motion for default judgment (DE 13), filed January 13, 2014. For reasons set forth below, the motion is granted in part and denied in part.

## BACKGROUND

Plaintiff initiated this action by complaint filed August 16, 2013, with reference to its subrogar, Leeland Farms, LLC, who at all times material owned real property located at 39188 Weakfish Drive, Avon, North Carolina. Defendant is a resident of Connecticut. Plaintiff had issued a policy of insurance to Leeland Farms, LLC, for that property, a three-story, single-family dwelling that seasonally was rented by Leeland Farms, LLC, with tenant Patrick E. Rohme residing there, at the time of a grease fire August 17, 2010, which Rohme is alleged to have started while cooking.

Substantial damage was sustained to the dwelling. Leeland Farms, LLC lost rental income for future rentals schedules from and after August 17, 2010. Plaintiff paid to Leeland Farms, LLC \$139,268.65 less its \$2,500.00 deductible, for property damage and business income claims.

Plaintiff seeks to recover its damages.

Service duly was made. No response being made by defendant, upon plaintiff's request, the clerk entered default December 9, 2013. The instant motion followed January 13, 2013. Plaintiff offers affidavit of David Lane, plaintiff's Director, and asserts entitlement to the sum of \$139,351.51, together with pre-judgment interest at the legal rate from and after a series of disbursements referred to therein, between August 20, 2010, and June 29, 2011, together with post-judgment interest.

#### COURT'S DISCUSSION

Pursuant to complaint, plaintiff is owed the sum of \$136,768.65 (\$139,268.65 - 2,500.00). In the instant motion, plaintiff notes failure to assert entitlement to an additional sum of \$82.86, paid June 29, 2011, in its complaint. Here, plaintiff would seek to show entitlement to the sum of \$139,268.65, paid between August 20, 2010, and March 9, 2011, together with that sum of \$82.86 paid June 29, 2011, for a total of \$139,351.51. No accounting for the deductible is offered in the instant motion. In furtherance of the claimed amount, reference is made to a check made payable to Leeland Farms, LLC in the amount of \$5,000.00 as a cash advance. This sum is added together with successive checks totaling \$134,351.51 for losses sustained, totaling that sum of \$139,351.51.

With respect to its pre-judgment interest claim, on the bare showing made, devoid of any copy of a contract of insurance and/or supporting legal argument, this court cannot find plaintiff entitled to interest at the legal rate of eight percent (8%) per annum from and after date of any payment, and so does not award any pre-judgment interest.

Where there appears discrepancies as between amount sought in complaint and that asserted on motion, the court deems the judgment award shall be the lesser amount of \$136,768.65. The

clerk shall enter judgment by default against defendant in the sum of \$136,768.65, with interest at the legal rate from and after entry of judgment until paid in full. The clerk is directed to close the case.

SO ORDERED, this the 16th day of January, 2014.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN  
United States District Judge